

**HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
Writ Appeal No.750 of 2007**

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Between:

Javed Bin Mohammed

... Appellant

And

The Municipality of Nirmal,
Rep. by its Municipal Commissioner,
Nirmal, Adilabad District and four others

... Respondents

Counsel for the appellant: Shri Sadu Rajeshwar Reddy

Counsel for respondent No.1: Shri Poliseti Radhakrishna

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::JUDGMENT::

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September 18, 2007

Per G.S. Singhvi, CJ

Having failed to persuade the learned Single Judge to issue a writ of mandamus to the respondents to allow him to operate juice centre in front of APSRTC Bus Stand at Nirmal, the appellant has

preferred this appeal under Clause 15 of the Letters Patent.

In the writ affidavit filed by him, the appellant claimed that he has been running juice centre for the last 20 years and that he had taken electricity connection with Service No.15276 after obtaining permission from Municipality, Nirmal (for short, 'the Municipality'). He averred that the juice centre is neither obstructing the footpath and road nor it is causing any inconvenience to the people, but then alleged that the respondents are trying to evict him at the instance of the Chairman of the Municipality, who belongs to the opposite party.

In the counter filed him, Shri B. Srinivas, Commissioner of the Municipality averred that there is no record relating to running of juice centre by the petitioner in front of APSRTC Bus Stand and that the Municipality has not issued certificate dated 17.2.2001. He further averred that there is no separate land between the road boundary of NH-7 and APSRTC Bus Stand premises and the proposed juice centre will obstruct the traffic. Shri Srinivas denied the allegation of removal of juice centre by the municipal authorities and averred that the encroachment made by the petitioner may have been removed by Revenue Divisional Officer, Nirmal and NH-7 authorities.

The learned Single Judge dismissed the writ petition by observing that the petitioner has not produced any evidence of permission having been granted by the Municipality or revenue authorities for installation of juice centre and that he has no right to use road margin for running the juice centre. The learned Single Judge discarded certificate dated 17.2.2001 issued by the President of the Municipality by observing that the same does not bear file number and no proceeding appears to have been drawn by the

competent authority entitling the petitioner to run the juice centre in front of the APSRTC bus stand.

We have heard Shri Sadu Rajeshwar Reddy, learned counsel for the appellant and scrutinised the record. At the outset, we consider it proper to mention that after filing this appeal, the appellant sought impleadment of Superintendent of Police, Adilabad, Sub-Inspector of Police, Nirmal Town Police Station and Maqbool S/o.Esa as respondent Nos.3 to 5 by alleging that he was forcibly evicted by Maqbool S/o.Esa with the help of Superintendent of Police and Sub-Inspector of Police, but WAMP No.717 of 2007 filed by him for that purpose was dismissed by the Court on 10.9.2007 by recording the following order:

W.A.M.P.No.717 of 2007

This is an application by the appellant for impleading Superintendent of Police, Adilabad, Sub-Inspector of Police, Nirmal Town Police Station and Maqbool, S/o Esa as respondent Nos. 3 to 5 in the appeal filed against order dated 29.01.2007 passed by the learned Single Judge in Writ Petition No.4941 of 2006.

We have heard Shri Sadu Raheshwar Reddy, learned counsel for the applicant-appellant at considerable length and scrutinized the record. In our opinion, neither of the three proposed respondents is necessary party for disposal of the appeal and the application is liable to be dismissed.

The main complaint of the appellant, which did not find favour with the learned Single Judge was that he has been forcibly evicted from the site in front of Andhra Pradesh State Road Transport Corporation Bus Stand at Nirmal. In the affidavit filed by him in support of the application, the applicant has averred that despite the order of status quo passed by the learned Single Judge, the proposed respondent No.5 forcibly evicted him and occupied the site.

If what the applicant has averred is correct, then the remedy available to him is to file civil suit against respondent No.5 because,

in exercise of power under Article 226 of the Constitution of India, this Court cannot decide civil dispute between private individuals.

We are further of the view that even if the if the proposed respondent No.5 has been impleaded as a party to the writ petition, the learned Single Judge could not have, in exercise of power under Article 226 of the Constitution of India, granted relief to him against the said respondent.

Insofar as the remaining two proposed respondents are concerned, they have nothing to do with the unauthorized occupation of the public premises by the applicant and his eviction by the authorities of Municipality, Nirmal.

With the above observations, the application is dismissed.

The appellant's prayer for being allowed to run the juice centre in front of the APSRTC Bus Stand is liable to be rejected because he has not produced any document to show that the competent authority of the district administration or Municipality had authorized installation of the juice centre at the site in question and that he was granted license/permission to operate the same. In the affidavit filed by him, the appellant did state that he has been running juice centre for last 20 years, but no evidence was produced by him to substantiate this assertion. In the counter affidavit filed by him, Shri B. Srinivas, Commissioner of the Municipality specifically denied the appellant's assertion that he was running the juice centre for the last 20 years. The appellant did not file rejoinder affidavit to controvert this statement. Therefore, we do not find any justification to issue a mandamus to the official respondents to allow the appellant to operate juice centre on the road margin. Such an activity will not only obstruct the traffic but will be hazardous for the people coming to the bus stand. The electricity connection allegedly obtained by the appellant cannot be made basis for permitting him to operate juice

centre on the road margin, which is abutting NH-7, moreso because he has not obtained permission from the competent authority.

In the result, the appeal is dismissed.

G.S. SINGHVI, CJ

September 18, 2007

C.V. NAGARJUNA REDDY, J

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